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Report of the Human Rights Council

Proposed programme budget for the biennium 2012-2013

Financing of unforeseen and extraordinary expenses arising from resolutions and decisions of the Human Rights Council

Report of the Secretary-General

Summary

In the context of its review of the work and functioning of the Human Rights Council after its five years in existence, the General Assembly recognized, in paragraph 9 of its resolution 65/281, the need to provide adequate financing to fund unforeseen and extraordinary expenses arising from resolutions and decisions of the Human Rights Council. In that resolution, the Assembly requested the Secretary-General to present a report with options for consideration by the Fifth Committee at the main part of the sixty-sixth session of the Assembly to address this issue. The present report outlines three possible options for consideration by the Assembly in this regard. It is recommended that the General Assembly endorse the appropriate option to enable the Secretary-General to proceed, preferably from 1 January 2012.

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I. Introduction

1. In paragraph 9 of its resolution 65/281 of 17 June 2011 on the review of the Human Rights Council, the General Assembly recognized the need to provide adequate financing to fund unforeseen and extraordinary expenses arising from resolutions and decisions of the Human Rights Council, and in that regard requested the Secretary-General to present a report with options for consideration by the Fifth Committee at the main part of the sixty-sixth session of the Assembly, taking into account the relevant conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions.

2. The relevant conclusions and recommendations of the Advisory Committee on Administrative and Budgetary Questions referred to by the General Assembly are as follows:

(a) In its report of 14 December 2007 (A/62/7/Add.25, para. 25), the Advisory Committee pointed out that the purpose of the provision for unforeseen and extraordinary expenses was to deal with expenditures for which no provision had been made in the approved regular budget. If, on the basis of the practice of the last two bienniums, there was recurrent need for special missions in the area of human rights, then, in the interest of budgetary transparency, consideration should be given to including a provision for such requirements in both the budget outline and the proposed programme budget, akin to that used for special political missions. Those conclusions and recommendations were endorsed by the General Assembly in its section VI of its resolution 62/238;

(b) In its report of 18 December 2008 (A/63/629, paras. 10 and 20), the Advisory Committee recommended that the modalities for consideration of the financial requirements arising from resolutions and decisions of the Human Rights Council be maintained on an annual basis, and any appropriations as might be necessary would be requested in the context of the consolidated statement of programme budget implications and revised estimates relating to the use of the contingency fund. Those conclusions and recommendations were endorsed by the General Assembly in section V of its resolution 63/263;

(c) In its report of 29 November 2010 (A/65/548/Add.1, para. 8), the Advisory Committee stated that it was cognizant of the time lag between adoption of Human Rights Council resolutions and decisions and the subsequent ex post facto approval by the General Assembly of the related resource requirements and recommended that the Secretary-General give consideration to exploring options aimed at streamlining and synchronizing the resource requests related to the resolutions and decisions of the Human Rights Council with the resources requested in relation to the biennial proposed programme budget of the Secretariat. Those conclusions and recommendations were endorsed by the General Assembly in section IX of its resolution 65/259;

(d) In its first report on the proposed programme budget for the biennium 2012-2013 (A/66/7, para. VI.7), the Advisory Committee stated that it looked forward to the results of the review by the General Assembly of the status of the Human Rights Council and trusted that the proposals stemming from that review of the issue of funding for new requirements would contain measures to ensure the most efficient and effective utilization of the existing resources of the Office.

3. It was anticipated that, in the course of the five-year review of the Human Rights Council conducted in 2011 in accordance with paragraph 16 of General Assembly resolution 60/251, the financial mechanism could be created, establishing interrelation between and guidelines for dealing with the requirements resulting from the resolutions and decisions of the Council, including financing the policymaking organs, further treatment of perennial activities, funding of the universal periodic review and, especially, financing of unforeseen and extraordinary expenses. The General Assembly, in its resolution 65/281, requested the Secretary-General to present options on funding unforeseen and extraordinary expenses arising from resolutions and decisions of the Human Rights Council. The present report is submitted in response to that request.

II. Current procedures for financing unforeseen and extraordinary expenses

4. The current procedures for meeting expenses to implement unforeseen activities are intended to enable the Secretary-General to incur expenditures of an urgent nature, under certain conditions, without immediately reverting to the General Assembly on the matter. Unforeseen activities may be classified in five categories: (a) upon certification by the Secretary-General that the activities, to be undertaken on his own initiative, relate to peace and security; (b) for implementation of decisions of the Security Council for activities related to peace and security other than peacekeeping; (c) for implementation of immediate requirements of the start-up activities for a peacekeeping operation established by the Security Council; (d) unforeseen activities not related to peace and security; and (e) unforeseen activities approved by the General Assembly as described in detail below.

A. Unforeseen activities upon certification that they relate to peace and security

5. Under paragraph 1 (a) of the General Assembly resolutions on unforeseen and extraordinary expenditures (the most recent one is resolution 64/246), the Secretary-General is authorized to enter into commitments, without the prior concurrence of the Advisory Committee, of up to $8 million per year for activities certified by him as relating to the maintenance of peace and security. Such activities, occurring on an ad hoc basis throughout the year, are primarily based on the Secretary-General's own initiatives. This commitment authority has been used principally for the appointment of special envoys for peacemaking activities, fact-finding and advisory missions. The Secretary-General informs the Security Council of the appointment of such envoys and missions.

6. In accordance with paragraph 11 of annex I to General Assembly resolution 41/213 of 19 December 1986 and paragraph 6 of resolution 56/233 B of 27 June 2002, such a procedure is also used for unforeseen additional requirements for special political missions, while a predictable recurrent provision for missions related to peace and security expected to be extended or approved during the course of the biennium is made in the budget outline and also included in the proposed programme budget in accordance with General Assembly resolution 53/206.

B. Decisions by the Security Council regarding activities related to peace and security other than peacekeeping

7. When the Security Council decides on activities related to peace and security other than peacekeeping, the Secretary-General seeks the concurrence of the Advisory Committee, under the General Assembly resolution on unforeseen and extraordinary expenses, to enter into commitments for start-up activities prior to the preparation and submission of a budget for approval by the General Assembly. The Advisory Committee, on a case-by-case basis, is requested to concur with the Secretary-General's request to enter into commitments of up to $10 million per Council decision. If, however, the nature of the start-up requirements of such activities is so urgent that the Secretary-General is unable within the time constraints to make a presentation and seek the concurrence of the Advisory Committee, the Secretary-General's own commitment authority, under paragraph 1 (a) of the resolution on unforeseen and extraordinary expenses, is exercised, provided the requirements can be met from the balance remaining of the $8 million per year.

C. Decisions by the Security Council for peacekeeping operations

8. Pursuant to section IV of General Assembly resolution 49/233 A of 23 December 1994, the Secretary-General may, with the prior concurrence of the Advisory Committee, enter into commitments of up to $50 million for each decision of the Security Council for the start-up or expansion requirements of a peacekeeping operation, pending the preparation of a full budget for review and approval of the budget by the Assembly. This arrangement is funded from the Peacekeeping Reserve Fund, initially established by the General Assembly in resolution 47/217 of 23 December 1992 in the amount of $150 million. Where requirements exceed $50 million, or several "commitment authorities" combined total more than $150 million at any one time, the approval of the General Assembly is required.

D. Other activities not related to peace and security

9. In cases where unforeseen activities are not related to peace and security, the Secretary-General is authorized, with the prior concurrence of the Advisory Committee, in accordance with paragraph 1 of the resolutions on unforeseen and extraordinary expenses (the latest resolution is 64/246), to enter into commitments for expenditures for which provision has not been included in the approved programme budget and for which the Secretary-General cannot await the approval of the Assembly. The request for concurrence of the Advisory Committee sets out the justification for incurring such expenditures (which have included those related to decisions of the Economic and Social Council) and for not deferring them to the following year.

E. Decisions by the General Assembly on unforeseen activities

10. In those cases when a Main Committee of the General Assembly adopts a resolution to implement unforeseen activities, a statement of the programme budget implications of that decision is presented by the Secretary-General if those activities

cannot be met through existing resources. Since the Assembly at the same session can take a decision on the funding of those additional activities in the context of the contingency fund, the question of financial authority through other means normally does not arise.

11. The Secretary-General's own authority, up to a total of $8 million per year, is currently utilized as described in subsections A and B above. All commitments made under the provisions of the resolution on unforeseen and extraordinary expenses of activities shall be reported to the Advisory Committee and the General Assembly on supplementary estimates. Actual requirements in respect of activities relating to the maintenance of peace and security are reported to the Assembly in the context of the annual budget performance reports.

III. Background

12. In its resolution 60/251, the General Assembly decided to establish the Human Rights Council, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly. While it was stated, in rule 1 of its rules of procedure, that the Council should apply the rules of procedure established for the Main Committees of the General Assembly, no specific funding mechanism has been established, especially for the procedure for funding unforeseen and extraordinary expenses arising from resolutions and decisions of the Council.

A. Arrangements for financing activities resulting from resolutions and decisions of the Commission on Human Rights

13. It was initially considered that the procedure for handling the reports of the Human Rights Council and the related financial requirements would be similar to that of the Council's predecessor, the Commission on Human Rights, i.e., that for functional commissions of the Economic and Social Council. In accordance with that procedure, the report of the Commission on Human Rights, containing an annex of the related programme budget implications statements, was submitted to the Economic and Social Council. Once adopted by that Council, revised estimates resulting from the decisions of the Commission on Human Rights were submitted to the General Assembly in the context of revised estimates resulting from resolutions and decisions of the Economic and Social Council.

14. Prior to the adoption of General Assembly resolution 41/213, resources for human rights activities, whose mandates had been renewed annually, were considered non-recurrent and were not carried over to the next biennium, and every year when the Economic and Social Council adopted mandates on the report of the Commission on Human Rights, statements of programme budget implications would be issued and the resources needed to implement the mandates were then sought, for each particular mandate, under the terms of the resolution on unforeseen and extraordinary expenses for the biennium concerned.

15. In accordance with paragraph 7 of annex I to General Assembly resolution 41/213, efforts had been made to include provisions in the proposed programme budgets for all reasonably predictable requirements so as to reduce to a minimum the need to present additional requirements through revised estimates or statements

of programme budget implications and to ensure the expedient implementation of the decisions of the Commission on Human Rights. Expenditures related to activities of a "perennial" character whose mandates had been renewed or extended for a one-year or three-year period have been included in the proposed programme budgets under the respective budget section for human rights. The related conference-servicing requirements for meetings of the Human Rights Council, its subsidiary machinery and processing of the documents, requested in resolutions and decisions of the Council, had been included under the budget section for General Assembly and Economic and Social Council Affairs and conference management, and the budget section for Administration, Geneva. The additional expenditures derived from legislative mandates not provided for in the proposed programme budget were sought, on an annual basis, in the context of the contingency fund relating to the biennium. Unforeseen and extraordinary requirements resulting from rare special sessions of the Commission on Human Rights were reported to the following session of the Economic and Social Council and then to the Advisory Committee on Administrative and Budgetary Questions for its related concurrence for a commitment authority under the resolution on unforeseen and extraordinary expenses. The respective appropriation was sought from the closest session of the General Assembly in the context of the contingency fund.

B. Current arrangements for financing activities resulting from resolutions and decisions of the Human Rights Council

16. The periodicity of the annual and special sessions of the Human Rights Council has been much more frequent than that of the sessions of the Commission on Human Rights. Since its inception in June 2006 to date, the Human Rights Council has held 17 special sessions in addition to its three regular annual sessions. Many of those special sessions have resulted in the establishment of fact-finding missions or independent commissions of inquiry, tasked with investigative powers to assess a critical human rights situation on an urgent basis. Three such missions were mandated by the Human Rights Council during the biennium 2006-2007, including one for Lebanon and two for Darfur. A fourth independent commission of inquiry was established by the Secretary-General on the invitation of the President of Timor-Leste, bringing the total costs for the biennium to $1.9 million. During the biennium 2008-2009, two major operations of this nature were conducted, in the Occupied Palestinian Territory and in Guinea, costing some $800,000. In the biennium 2010-2011, seven such operations have been conducted, including three in the Occupied Palestinian Territory during 2010, at a cost of approximately $675,000. To date in 2011, four further commissions of inquiry and/or fact-finding missions have been mandated by resolutions of the Human Rights Council, to assess the situation of human rights in the Libyan Arab Jamahiriya, in Côte d'Ivoire and in the Syrian Arab Republic (Human Rights Council resolutions S-15/1 and 17/17; 16/25; and S-16/1 and S-17/1, respectively), for which costs have been estimated at a total of more than $4 million.

17. As shown in the table below, unforeseen expenses for commissions of inquiry and fact-finding missions in the area of human rights, financed under the regular budget, are expected to reach a peak of more than $4 million in the biennium 2010-2011.

Table

Unforeseen and extraordinary expenses for human rights activities for the period 2006-2011 and estimated known requirements for the biennium 2012-2013

Activity	*United States dollars*
Independent Special Commission of Inquiry for Timor-Leste	937 451
High-level Commission of Inquiry on Lebanon	500 146
High-level mission concerning the situation of human rights in Darfur	206 197
Situation of human rights in Darfur	261 600
Total, 2006-2007	**1 905 394**
Situation of human rights in Myanmar and follow-up	46 700
Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1	51 064
International Commission of Inquiry for Guinea	363 464
The grave violations of human rights in the Occupied Palestinian Territory (Goldstone Report)	369 092
Total, 2008-2009	**830 320**
Follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict (Human Rights Council resolution 13/9)	214 988
Fact-Finding Mission on the Israeli attack on the humanitarian boat convoy (Human Rights Council resolution 14/1)	341 632
Follow-up to the report of the Independent International Fact-Finding Mission on the incident of the humanitarian flotilla (Human Rights Council resolution 15/1)	118 000
Commission of Inquiry on the Libyan Arab Jamahiriya (Human Rights Council resolution S-15/1)	635 292
Commission of Inquiry on Côte d'Ivoire (Human Rights Council resolution 16/25)	365 056
Fact-Finding Mission to the Syrian Arab Republic (Human Rights Council resolution S-16/1)	236 340
Commission of Inquiry on Libya 2 (estimated) (Human Rights Council resolution 17/17)	1 275 942
Commission of Inquiry on the Syrian Arab Republic (estimated) (Human Rights Council resolution S-17/1)	885 896
Total, 2010-2011*	**4 073 146**
Commission of Inquiry on Libya 2 (estimated) (Human Rights Council resolution 17/17)	230 700
Commission of Inquiry on the Syrian Arab Republic (estimated) (Human Rights Council resolution S-17/1)	575 511
Total, 2012-2013*	**806 211**

* As at 31 October 2011.

18. As these operations have required urgent implementation, for instance, requesting the United Nations High Commissioner for Human Rights and/or the

Secretary-General to appoint and dispatch an urgent mission for a time-bound period as defined in the relevant Human Rights Council resolution, it has not always been possible to seek the concurrence of the Advisory Committee for commitment authority under provisions of the respective General Assembly resolutions on unforeseen and extraordinary expenses or to wait for the approval of the Assembly in its normal annual review of budgetary matters, in particular, resolutions of the Council on the commissions of inquiry and fact-finding missions undertaken in 2010-2011 (see the table above).

19. Accordingly, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has resorted to all available sources of funding for the quick start, continuation and completion of the activities of independent commissions of inquiry and/or fact-finding missions, resulting from resolutions or decisions of the Human Rights Council. This has typically required temporary redeployment of existing regular budget resources allocated for other activities. Given numerous missions mandated in 2011 (see the table above), the existing uncommitted regular budget resources were insufficient and thus the Office had no option but to draw, on an exceptional basis, upon extrabudgetary resources, using its small extrabudgetary "contingency fund" maintained through voluntary contributions for rapid response activities that the High Commissioner deems necessary. Those funds were temporarily advanced to support the urgent missions, pending approval by the General Assembly of additional resources in the context of its consideration of the revised estimates resulting from resolutions and decisions of the Human Rights Council.

20. As indicated in paragraph 31 of the annex to General Assembly resolution 65/281, financing of special procedure activities is supposed to be achieved through the regular budget. While respective proposals were made by the Secretary-General, in his reports contained in documents A/62/125 and A/63/541, on inclusion in paragraph 1 of the resolution on unforeseen and extraordinary expenses of a provision authorizing the Secretary-General to enter into commitments of up to $2 million during the biennium, the General Assembly did not act on those proposals and the matter was set aside for further review, on the basis of additional experience gained, in the context of the review of the Human Rights Council.

21. The General Assembly confirmed, in section V of its resolution 63/263, that revised estimates resulting from resolutions and decisions adopted by the Human Rights Council should be consolidated and presented in a single annual report, so as to avoid any "piecemeal" review of budgetary issues. As a result, the Advisory Committee's and the General Assembly's review of the resource requirements for the urgent human rights procedures has been, for the most part, ex post facto, and redeployment of resources within the approved appropriation has been made subsequently to account for the already committed resources. Thus, OHCHR has to implement decisions of the Human Rights Council, requesting that urgent human rights missions with sizeable financial implications be conducted.

IV. Options for urgent provision of funds

22. In order to ensure availability of funds for implementation of the urgent human rights activities resulting from the resolutions and decisions of the Human Rights Council within the established procedures and to maintain full transparency and accountability, the following options are proposed.

A. Including a provision for special missions in the area of human rights in the proposed programme budget

23. This option suggests the inclusion of a provision for financing urgent independent commissions of inquiry and/or fact-finding missions, resulting from resolutions and decisions of the Human Rights Council, in both the budget outline and the proposed programme budget in accordance with paragraph 7 of annex I to General Assembly resolution 41/213 similar to that used for special political missions. This arrangement would require an additional appropriation of $2 million under section 24 (Human rights) of the proposed programme budget for the biennium 2012-2013 (A/66/6 (Sect. 24)). In addition to the existing resources for human rights "perennial" activities, whose mandates are renewed annually or triannually, this provision would be utilized to support all expenditures expected, on the basis of the experience of previous bienniums, to be extended or approved, in the course of the biennium, for special human rights missions resulting from decisions of the Human Rights Council and the Security Council, in accordance with clear guidelines to be established by the General Assembly for the use of that provision.

24. Under this option, actual expenditures and the balances remaining for the forthcoming year to finance special human rights missions that are accommodated under these arrangements would be reported annually in the context of the budget performance reports. Should the urgent additional requirements for special human rights missions exceed the approved biennial provision, the Secretary-General may seek recourse to the provisions of the General Assembly resolution on unforeseen and extraordinary expenses.

25. Clear guidance will be required in respect of the criteria for use of this provision defining clear terms of reference and conditions for financing the additional requirements, i.e., whether an urgent additional requirement should result from the resolution of the Human Rights Council and/or the Security Council and be certified by the High Commissioner for Human Rights.

B. Establishment of a reserve fund for special human rights missions

26. This option presumes the establishment, through additional assessments, of a reserve fund in the amount of $2 million per biennium for financing new urgent independent commissions of inquiry and/or fact-finding missions in the area of human rights, resulting from resolutions or decisions of the Human Rights Council and/or the Security Council, or for the expansion, extension or follow-up to existing missions. Resources committed under this arrangement would be replenished to the fund annually through an additional appropriation sought from the General Assembly in the context of its consideration of the consolidated statement of the contingency fund in accordance with Assembly resolutions 41/213 and 42/211 or in the context of the budget performance reports. Appropriately, detailed guidance for the use of this fund would be required from the Advisory Committee and the General Assembly, specifying the circumstances under which the funds could be committed, released and reported to the Assembly in the context of the existing schedule of reporting for the regular budget for the biennium.

C. Access to resources under the General Assembly resolution on unforeseen and extraordinary expenses

27. This option presumes an access to immediate funding for urgent activities resulting from resolutions of the Human Rights Council under paragraph 1 (a) of the General Assembly resolutions on unforeseen and extraordinary expenses (the latest resolution is 64/246), which authorizes the Secretary-General to enter into such commitments not exceeding a total of $8 million in any one year of the biennium 2010-2011 as the Secretary-General certifies relate to the maintenance of peace and security. The terms of the resolution on unforeseen and extraordinary expenses could be amended to include providing a commitment authority also for urgent requirements in the area of human rights, within a specified limit, on the same basis as for the maintenance of peace and security. That would enable immediate access to appropriate funding within approved parameters and with clear reporting requirements. It could be done either by including under paragraph 1 of the General Assembly resolution on unforeseen and extraordinary expenses a separate subparagraph for activities mandated by the Human Rights Council with a limit of $2 million for a biennium, or by increasing the existing limit of $8 million in paragraph 1 (a) by $1 million, i.e., to $9 million in any one year and adding the words "and for urgent commitments in the area of human rights" after the words "peace and security".

V. Conclusions and recommendations

28. **As regular budget resources to finance unforeseen and extraordinary expenses in the area of human rights cannot be secured on a timely and sustainable basis without a specific mechanism to ensure their prompt availability within the relevant United Nations regulations and procedures, the General Assembly is requested to make a decision on the most appropriate option presented in this report.**